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# ROSEBERRY LIABILITY

AND

# COMPENSATION LAW

OF

# CALIFORNIA -

(Effective September 1, 1911)

ISSUED BY THE

## INDUSTRIAL ACCIDENT BOARD

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# ROSEBERRY LIABILITY AND COMPENSATION LAW

## FOREWORD.

The Industrial Accident Board, created to administer the compensation provisions of the Roseberry Employers' Liability Law of California (Chapter 399, Laws 1911), herewith presents the law, together with notes and comments thereon.

In determining whether or not they will elect to accept the compensation provisions of this law, employers should keep in mind the following points:

1. The advantages of compensation.
2. The objections to the old system of employers' liability.
3. Relative costs of the two systems.

## ADVANTAGES OF COMPENSATION.

The principal objects to be attained in a workman's compensation act are—

1. To furnish certain, prompt, and reasonable compensation to the injured employee, which should consist of,

(a) Medical treatment immediately after injury;

(b) Such compensation, or financial aid, to the injured person as will maintain him above want until he recovers from his injury;

(c) In the event that the accident results in death, then such aid to those dependent upon him as will keep them above want until they can develop a self-sustaining status.

2. To utilize for the benefit of injured employees, and those dependent upon them, a larger proportion of the vast sums which employers pay out for liability insurance.

3. To encourage the introduction of preventive devices and preventive discipline, thereby reducing the number of accidents to a minimum.

## **OBJECTIONS TO OLD SYSTEM OF EMPLOYERS' LIABILITY.**

The principal objections to the old liability system are—

1. That only a small proportion of the workmen injured by accidents of employment get substantial compensation, and, therefore, as a rule, those who do not, and their dependents, are forced to a lower standard of living and often become burdens upon the state through public or private charity.

2. That the system is wasteful, being costly to employers and the state, and of small benefit to the victims of accidents.

3. That the system is slow in operation, involving, of necessity, great delay in the settlement of cases. The average time required to effect such settlement through legal proceedings is about five (5) years. A substantial recovery five or six years after the happening of the accident may be of some benefit to the heirs, but very little to the individual who, in the mean time, may have become a public charge.

4. That the operation of the law breeds antagonism between employers and employees.

## **RELATIVE COSTS OF THE TWO SYSTEMS.**

There do not exist complete statistics from which can be determined the cost to employers of industrial accidents resulting in personal

injuries to their employees, and therefore it is impossible accurately to determine the exact cost of operation under either the liability for damages or the compensation provisions of the Roseberry law.

A report of the Department of Commerce and Labor shows that if the total amount paid by employers to the liability insurance companies during a period of years had been paid directly to their injured employees it would have been sufficient to allow a substantial compensation to every employee seriously injured while, under the liability insurance system as operated, only a small percentage of those injured recovered anything.

Since the Roseberry liability law went into effect the liability insurance rates have been very greatly increased and, taking this increase into consideration, if we may judge the future from the past, it would seem that the devotion of the sum which employers will pay for liability insurance directly to the relief of their injured employees should be sufficient, approximately, to cover the compensation benefits contemplated by the Roseberry law.

Three factors enter into this estimate:

(1) The tremendous waste under the system of liability insurance as now operated.

(2) The fact that in some instances, where recovery is allowed as a result of a suit for damages, the amount recovered is excessive while the compensation benefits proposed by the Roseberry law are not.

(3) Since compensation is based upon wage-earning, and since wages are comparatively small and payment is made only when disability exists, and while it continues, the amounts which may be recovered under compensation are predetermined, easy of calculation and should give rise to no costly lawsuits.

If, under the law as it was, the cost of liabil-

ity insurance and of litigation and of damage verdicts was nearly as great to the employers in general as a substantial system of compensation would have been, the probability in favor of compensation being the cheaper is greatly enhanced now that the taking away from the employer of the old defenses upon which he chiefly relied has increased his liability risk in the neighborhood of 300 per cent.

Many voluntary compensation schedules have been put into operation by private employers, and their reports show that the cost thereunder has not materially exceeded the cost under the old system of insuring against liability for damages, and afterward aiding such insurance companies in their resistance to claims made for injuries received by their employees.

### SUPREME COURT CASES.

A study of the thirty-three employers' liability cases decided by the California Supreme Court between June, 1905, and June, 1911, discloses the following significant facts: Damages were recovered in twenty of these cases. In ten of them the judgments range between \$1,183 and costs to \$5,000 and costs. The remaining ten judgments are all over \$5,000 and as follows: Two for \$7,500, one for \$8,000, one \$8,500, two for \$9,000, one \$12,300, one for \$25,000 and two for \$30,000 each.

Of the ten cases in which damages in excess of \$5,000 were allowed only four were for deaths, showing that fatal injuries are rated less important than those for permanent total disability, a growing tendency everywhere.

Under one of the \$30,000 judgments, had the injured employee been under compensation, he would have received, and his employer would have paid, at the most only \$3,276.

The average time elapsing between date of

accident and of final judgment in these cases was four years, nine and seven-twelfths months. In cases arising in Los Angeles county the average time was two years and six months. Those arising in San Francisco required six years and three months. The shortest case (from Los Angeles) reached final judgment in two years and two months. The longest (from San Francisco) required six years and seven months to get through. In cases where no damages were recovered it took (from Los Angeles) three years and eleven months to reach final disposition, and those from San Francisco required seven years and two months.

Of the thirteen cases in which no damages were recovered the fellow-servant doctrine was the dominant defense in four cases, assumption of risk in one, both defenses combined in one, contributory negligence, two; contributory negligence and assumption of risk, one; negligence on the part of the employer not established, one; erroneous instructions to jury, two; incompetent testimony, one. It will be noted from this analysis that, had these cases arisen since the abrogation of the common-law defenses, nine out of the thirteen would not have resulted in the loss of their suits by the injured employees.

The prudent employer will note that in ten of the twenty cases in which damage judgments were affirmed the amount of damage was in excess of the \$5,000 for any one injury for which the casualty companies assume liability, that two of them were for sums six times as great, and another five times. Under "compensation" none can go above the \$5,000 limit.

### THE GOAL SOUGHT.

If the objects of compensation can be attained, the objectionable features of the old

system modified, inequitable conditions bettered, and waste and antagonism eliminated, California will enter upon a better era of industrial life. This the Roseberry law seeks to accomplish, but the transition from the old order to the new is certain to make large demands upon the forbearance and magnanimity of employers and generous co-operation of employees.

### NOT POSITIVE RULINGS.

What is stated in the pages following, in the way of comments on the law, must not be taken as positive rulings of the Industrial Accident Board as to the subjects treated. Rulings will be made only as concrete cases are presented to the board for consideration and action, and after hearing such arguments pro and con as interested persons may desire to make.

Therefore, if the comments ventured in succeeding pages convey to the mind of the reader the general purport of the law, they will have accomplished all that is anticipated of them.

### ADMINISTRATION BY INDUSTRIAL ACCIDENT BOARD.

The board will administer the law broadly to accomplish the purpose and intent of the legislature. In this work, the board bespeaks the friendly co-operation of employers, employees, and the public, well realizing that without such co-operation its efforts will be without avail.

Appended hereto will be found rules adopted by the board. Blank forms will be provided free upon request.

### INDUSTRIAL ACCIDENT BOARD.

A. J. PILLSBURY, *Chairman.*

WILL J. FRENCH.

WILLIS I. MORRISON.

## COMPENSATION.

WHAT THE COMPENSATION LAW IS; WHAT THAT  
LAW DOES; HOW AND WHY THE LAW CAME  
TO BE A LAW.

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WHY WAS NOT THE LAW LEFT AS IT  
WAS?

There is a certain line that encircles the globe. Every school boy knows of it, yet no man ever saw it, and for the very good reason that there isn't really any line there. It is an imaginary line, useful only for purposes of geographical description. Reference is here made to the equator.

There is another line that runs up and down the earth and in and out of nearly every street of every city, into the homes of those who toil, wherever they are. Three fourths of the children of men live on it or near it, if not below it. It is known as "The Poverty Line." It is no imaginary line. It is so real that a premature explosion of dynamite or gunpowder, a flying missile, an infinitesimal fragment of steel, blinding one, may force him and his whole family to find that line in the dark, to sink below that line, perhaps never again to rise above it.

Industry in the United States kills somewhere between 30,000 and 50,000 persons each year, cripples more or less seriously 500,000, and injures in the neighborhood of 2,000,000 sufficiently to cause them to lose time from work. Of this army of killed and wounded California furnishes its full quota, and perhaps

more, inasmuch as relatively little in the way of accident prevention has been attempted in this state.

Under the law as it was, Industry turned from its doors, without recompense, all save a small percentage of its wounded and those dependent upon its dead, to shift for themselves as best they might, and, where relief was afforded, it has usually proven wholly inadequate for keeping the injured and those dependent upon them above the poverty line.

An awakening public and industrial conscience has said of this that it is not right, and that *each industry should care for its own killed and wounded* and those dependent upon them.

### WHAT THE OLD LAW WAS.

Until September 1, 1911, under the old law of California, the employer was not liable to his injured employee, except for negligence or wrongdoing, and not even then if the injured person was guilty of negligence, however slight, or if the injury resulted through the wrongful act or negligence of a fellow workman. If the accident occurred, as something like half of all accidents do occur, where no particular person could be charged with negligence or misconduct as a cause, but was a pure accident, the law held that the injured employee assumed that risk when he took employment and must bear the whole burden.

### HOW THE OLD LAW ORIGINATED.

These "fellow servant" and "assumption of risk" defenses are perhaps the best-known examples of so-called "judicial legislation," being unknown at law until 1837, when they were introduced by Lord Abinger in England in the case of *Priestly vs. Fowler*. This decision was followed by practically all the courts in the United States, without regard to the suitability

of the rules therein laid down to modern industrial conditions, and, when so adopted, continued as law, except as modified from time to time, mainly through legislative enactment, or, in some instances, by the courts themselves.

## HOW AND WHY THE "COMPENSATION" MOVEMENT STARTED.

In this country this humanizing movement started among the charity workers, who, when they found persons or families below the poverty line and in need of help, naturally sought to learn the reason why. In many thousands of instances they found their answer in the fact that "the thing" had happened; out of a clear sky a blow had fallen, and the family bread winner had either been killed or crippled in some industrial accident for the happening of which perhaps no one was morally responsible. These devoted men and women, so close to the consequences which the many do not see, began to agitate for safer conditions for labor, for protected machinery, for factory and workshop inspection, for laws enforcing humane regulations, and for compensation for those who are injured, regardless of legal liability, to the end that they and their families be kept above the poverty line. They made a great outcry and started a great movement.

## PROGRESS OF MOVEMENT.

Having challenged public attention, the work started by charity workers was taken up by the press and by large employers of labor, either singly or in their associations, and competent men and women were sent to Europe to study the methods of accident prevention and adjudication employed by Germany, Austria, France, and other continental countries, as well as by Great Britain. States in our Union appointed commissions to study the

subject and make reports, with the result that fully half the states in the Union have either made laws providing for compensation to workmen when injured, without regard to negligence, or have commissions working on the subject, and the issue is being agitated in all the others. The United States Government has constituted a commission to study the problem, and that commission is now working on a plan to make the compensation feature as nearly general as possible.

### **CALIFORNIA'S COMPETITORS PRECEDED IT.**

So far as the possibility of injury which some fear to the industries of California through competition with other states and countries that have not workmen's compensation laws is concerned, it is worthy of note that practically all of continental Europe has such laws, and has had them for many years; that Washington, Oregon, and Nevada have them; that Wisconsin, Illinois, Ohio, Kansas, Massachusetts, New Hampshire, New York, and New Jersey have such laws, and that other states are working toward them. Public sentiment will force the hands of the legislatures of all the states, even of those of the southern states of the Union, which are most tardy in respect to safeguarding labor.

### **THE BURDEN NO GREATER THAN BEFORE.**

Let it not be overlooked that the burden of accident is not being increased through this twentieth-century movement. Rather it is being diminished through the exercise of greater caution, better discipline, and the installation of protected machinery. Heretofore this burden has been borne, in the vast majority of instances, by those least able to bear it—the

injured person and his family. Compensation does not increase the burden of accident, but merely provides for its more equitable distribution. No one knows what in past centuries the sum total has cost, because the burden bearers have been mainly voiceless, and the cost was carried out in terms of deprivation, charity, and that criminality that grows out of poverty and keeps no accounts.

## **ATTITUDE OF EMPLOYERS TOWARD THE MOVEMENT.**

Employers generally favor workmen's compensation laws, or, at any rate, the principle involved in such laws, though they are not always satisfied with certain of the provisions of such laws as have been enacted. One finds one fault and another finds another, largely because of fears regarding the unknown and uncertain. Then, too, most of these laws are made, and naturally must be made, in advance of adequate experience, and may prove defective in certain particulars. Such laws will be amended as may be necessary until perfected, after which all men will wonder why the world endured the old system so long. Employers generally are approaching this movement toward compensation with open minds and in the hope of helping to solve, justly and humanely, a perplexing and far-reaching problem.

## **A STICKING POINT AND THE ANSWER.**

A sticking point with employers is that the compensation system frequently requires them to make compensation, even though they are chargeable with no fault of their own. "Why should we pay when we are not to blame?" they demand to know. For, as stated above, perhaps half of all accidents are pure accidents for which no one is to blame, and half of the remaining half are due to the fault or

inadvertence of the injured person himself. Why should the employer have to make compensation for these?

The employer will not, as a general rule, bear his portion of this cost, but will charge it into the cost of production, and so distribute the burden to the consuming public. For instance, an express train is thrown into the ditch by a broken rail, for which no one is responsible. The locomotive and cars are hoisted back upon the track, taken to the shops and repaired, and the cost of it is charged against the operating expenses of the road, to be covered by the charges for freight and fares paid by all patrons of the road. But the engineer also is smashed up. Who is to pay the cost of repairing him and putting him again in charge of his locomotive? Compensationists reply that his cost should go into the operating expenses of the road the same as that of the locomotive and cars. Why not? It will not be easy in all cases to make this transfer of cost to the consuming public through adding it to the cost of production and the selling price, but it can and will be done in the long run. Ordinarily, compensation will be treated as any other element of cost, and will adjust itself in time. The employer merely advances the cost of compensation as he advances the cost of materials and wages, sure of a final return in the equalizations of the market. No such opportunity, however, attends the injured employee. There is no way for him to transfer his suffering or diminution of wages to another.

The comparative increase in cost, if any, for the finished products will be small, and the employees must ultimately bear their proportion of cost as the largest consumers. Our law does not, even in the first instance, shift this entire burden upon the employer, but divides it between the employer and workman,

upon a basis of 65 per cent and 35 per cent, with the further limitation that a payment for injury can not exceed three times the annual average earnings of the employee. Society may properly choose whether it will bear the burden of industrial accident in the form of poverty and degradation or through an element of cost added to the prices of commodities. Employers must needs exercise a little patience while the problem of equalization of cost is being worked out, but that the end will be beneficial to all concerned can not be a subject for doubt.

## COMPENSATION THRICE FOUNDED IN JUSTICE.

"Compensation" is, first of all, founded in that social justice which demands that each industry shall so take care of its own killed and wounded, and those dependent upon them, that they shall not, as a result of industrial accident, become public charges.

Second, the ultimate consumer has a right to have his commodities furnished him at what they are worth after he shall have compensated, fairly, every person who has rendered a necessary service in their production or distribution to him, and he has no right to leave uncompensated any person in such chain of production or distribution, from the planting of the seed or mining of the ore, until the finished product is placed in his hands. But the hurt man has been left out and unpaid. A certain minimum of accidents will happen, forefend against them as we may. They are as truly elements of production as labor or capital, raw material or transportation, and justice inexorably demands that those who have contributed to industry or commerce a hand or foot, an eye or a life, shall be compensated for what they have lost.

Finally, "compensation" seeks, with equal justice, to cause such trade risks as may not

be transferred to the ultimate consumer to be shared between employer and employee on a basis of 65 per cent, to be borne by the employer, to 35 per cent, plus the pain and humiliation, to be borne by the employee until recovery, or, if the disability be permanent, then until such employee shall have received what he would have earned in three years had he not been injured, after which he must bear the loss himself as best he may until the end of his life. This is, also, a form of average justice between man and man that as closely approximates ideal justice as human institutions often attain.

## ACCIDENT PREVENTION.

With the common-law defenses abrogated or materially modified, as they all are under the Roseberry liability law, it becomes of the utmost importance that accidents do not happen. This is the best and cheapest insurance that can be had. Protect all shafts, belts, and gearings as thoroughly as possible, and never buy a new machine that is not safeguarded before it leaves the factory. Such machines cost little or no more than the unprotected, if the protection is built in when the machine is made, whereas there may be a considerable cost if added afterward. Discipline is another method of accident prevention. The United States Steel Corporation has reduced its number of accidents 70 per cent in three years, half by preventive devices and half by preventive discipline. Hold every foreman responsible for the safety of his men, but first give him power to weed out of his force irresponsible, heedless men likely to injure themselves or others. Put "safety" before speed or cost in turning out the product. Great strides have been made in perfecting preventive devices. Inquiry will develop what they are and where they can be obtained.

## **PREVENTIVE METHODS INCREASE EFFICIENCY.**

It might be supposed that constant care to avoid accidents would tend to decrease the efficiency of the workmen, but quite the contrary has proven to be the fact. For a considerable time after every distressing accident, the minds of the fellow workmen of the person injured are made timid by reason of the remembrance, and they lose time and energy through such timidity, whereas, under a good disciplinary and preventive system, a feeling of confidence and personal safety pervades the working force, and men do not work in a state of nervous fear. They take hold of their work with a sure grip and with a marked increase of effectiveness.

## **THE FARMER IS INCLUDED.**

It should be clearly understood that the farmer, as well as all other employers of labor, is included under the Roseberry law, but not under the compensation provisions thereof unless they so elect. Other states have generally excepted the ordinary farmer by providing that the law shall apply to those only who employ four or five or more hands, and not at all to those who employ less, even as to the abrogation of the common-law defenses; but there is no reason, in the nature of things, why agriculture should not take care of its own killed and wounded as well as other occupations, and farming is a hazardous occupation. In Germany it outranks any other occupation in the number of accidents sustained.

## **INSURANCE.**

Accident insurance is indispensable to any system of compensation or indemnification for injuries sustained in industry. It is indispensable to the employer in that it safeguards him against bankruptcy in the event of a seri-

ous accident occurring in his plant, and in no other way than by insurance can an employer hope to distribute a loss among ultimate consumers of his product. The philosophy of insurance is that all pay into a common fund out of which only a few draw, and it is through this payment into such a fund that the losses attending an industry are distributed as part of the cost of production. Insurance is also well nigh indispensable to the injured workman, in that it affords him the best assurance of receiving "compensation" or indemnification when awarded, inasmuch as individual employers die or fail or go out of business, perhaps leaving rights to "compensation" unprovided for.

## TWO KINDS OF INSURANCE.

Accident insurance has been divided into two kinds, "liability for damages" and "liability for compensation." Liability for damages insurance meets the principal needs of the employer in that it enables him to distribute the cost of accidents to the ultimate consumer, and, if he carries enough of it, it safeguards him against bankruptcy resulting from heavy damage verdicts. Although the standard policy is very inadequate to that end, inasmuch as it carries only a \$5,000 indemnity for any one person injured, or \$10,000 for any one accident if more than one person is injured, whereas, in cases of serious or fatal accidents, a single verdict might far exceed that limit.

But that form of insurance does not meet the needs of the injured employee. He is only an incident and not a party to the insurance contract. It protects the employer against the consequences of lawsuits, but not the employee against the consequences of accidents, and is, to that extent, opposed to sound public policy and should not be permitted without

modification in the public interest. This form of insurance is also wasteful in that of each \$100 paid to it by employers less than \$30, take the whole country over, reach the injured employee in final settlement, and if suits are instituted for the collection of insurance, final determination of the issue is not reached, on an average, until five to six years after the injury was sustained, by which time the injured person and his family have suffered whatever they could have suffered had there been no insurance at all. A provoking cause of delay in adjusting claims is that, pending adjustment, the sums which would otherwise be paid in losses are drawing interest to the profit of the insuring company.

### **“COMPENSATION” INSURANCE MORE COSTLY THAN “DAMAGE.”**

The stock companies engaged in liability insurance are all together in rate-making, if no further, and the rates they have made for “compensation” insurance under the Roseberry law range from one and a half to four and a half times their rates for liability for damages. This is because they do not expect, under the “liability for damages” feature of the law, to make anything like adequate payments for the injuries sustained, and because, under the liability for damages law, which holds the injured person down to a strict legal liability, it is not anticipated that more than one half the accidents which occur will be compensated. This is also opposed to that public policy which requires that the injured person, and his family, shall be kept above want until they can tide over their period of misfortune.

### **EXISTING CONDITION INTOLERABLE.**

From the standpoint of the public welfare, the existing condition of accident insurance in

California is intolerable. The standard policy usually offered affords insufficient protection to the employer and the rates charged for compensation insurance approach the prohibitory. The compensations provided under the Roseberry compensation law are not excessive, and it is intolerable that smaller compensation settlements be permitted under the liability for damages feature of the law, through driving hard bargains with afflicted families in the hour of their greatest distress and in view of the hardships involved in probable delays of the law in adjudicating claims for damages. The best thought of the state may well address itself to the task of remedying evils whose seriousness will scarcely be questioned, even by managers of insurance companies themselves.

### A WAY MUST BE FOUND.

The Industrial Accident Board desires to call attention to the fact that other states and countries have bettered their condition in many ways. Some have found relief from excessive charges for liability for damages insurance through the authorization of carefully-regulated mutual liability insurance associations, but such organizations do not meet the needs of injured workmen better than the same form of insurance afforded by stock companies. If stock companies are in the business for the money they can make, mutual associations are organized because of the money they can save, and the latter is scarcely more liberal than the former toward the workman who is insured.

Ohio and Washington are essaying compulsory state insurance, with what success time only can tell. Some European countries have worked this problem out fairly well, although on a scale of benefits that would be wholly inadequate in this country.

A suggestion has come from the liability in-

insurance companies themselves that compulsory insurance be coupled with state supervision and control of private insurance companies, to the end that extortion be prevented. It is conceivable that such a plan might work satisfactorily if supplemented with a system of state adjustment of all claims for damages as well as for compensation, as in Denmark, or with right of appeal from a private adjustment to a state department, as in Sweden. However it is done, some way must be found for protecting injured workmen from being pressed, through inexorable necessity, into accepting less than an adequate indemnification for damage sustained where the right to damages is reasonably clear.

## **RISKS OF LIABILITY FOR DAMAGES.**

Whereas, under the old law, with the old common-law defenses available to be set up against claims of injured workmen, only 8 to 12 per cent of all accident claims were decided in favor of the claimants (although a larger percentage was settled out of court because cheaper to settle than to litigate), it is generally expected that, under the new law, damages will be obtainable in perhaps 40 per cent of all accidents. The tendency, too, is to make the measure of damages, where blame exists, include, not alone loss of time and of earning power, but remuneration for the suffering endured. In short, the tendency is to make the damage awarded cover the damage suffered, and, if there has been serious neglect on the part of the employer, to make the damage exemplary as well as compensatory. Moreover, damage judgments are payable in lump sums which, in their collection, may inflict serious financial hardship, while compensation is paid, as wages are paid, weekly.

## **RISKS OF LIABILITY FOR COMPENSATION.**

Under the compensation provisions of the Roseberry law, it is probable that nearly all accidents resulting in disabling an employee for more than one week will have to be compensated. The only deductions from the total will be where the employee, by reason of neglect of his rights or disinclination to use them to the cost of his employer, fails of making claim, or where, if he does make claim, it can be shown that his accident resulted from his own wilful misconduct, not that form of negligence that arises out of a momentary forgetfulness or misstep or inadvertence such as are of common, every-day experience. It is not unlikely, therefore, that 75 or 80 per cent of all disabling accidents will have to be compensated under the compensation provisions of the Roseberry law. The compensation will be determined solely upon loss of earning power, and will run only so long as the disability to earn continues, provided that the total payments can not exceed three years' earnings of the employee. The compensations allowed for injuries under this law are not excessive. They are not greater than are needed in order to keep the injured person and his family above the poverty line until a self-sustaining earning power can be developed. In no case will they fully compensate for the loss sustained and the injury inflicted.

## **WHY OPTIONAL AND NOT COMPULSORY.**

A main reason for making the compensation feature of the Roseberry law optional and not compulsory upon employers was a doubt as to the constitutionality of a compulsory law, but the adoption by the people of Amendment No. 10 removed that objection.

# ROSEBERRY EMPLOYERS' LIABILITY ACT

AND

NOTES AND COMMENTS THEREON.

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## CHAPTER 399, LAWS 1911.

*An act relating to the liability of employers for injuries or death sustained by their employees, providing for compensation for the accidental injury of employees, establishing an industrial accident board, making an appropriation therefor, defining its powers and providing for a review of its awards.*

[Approved April 8, 1911.]

*The people of the State of California, represented in senate and assembly, do enact as follows:*

### COMMON-LAW DEFENSES.

Contributory Negligence Modified, Assumption of Risk and Fellow-Servant Rule Abrogated.

Section 1 In any action to recover damages for a personal injury sustained within this state by an employee while engaged in the line of his duty or the course of his employment as such, or for death resulting from personal injury so sustained, in which recovery is sought upon the ground of want of ordinary or reasonable care of the employer, or of any officer, agent or servant of the employer, the fact that such employee may have been guilty of contributory negligence shall not bar a recovery therein where his contributory negligence was slight and that of the employer was gross, in comparison, but the damages may be diminished by the jury in proportion to the amount of

negligence attributable to such employee, and it shall be conclusively presumed that such employee was not guilty of contributory negligence in any case where the violation of any statute enacted for the safety of employees contributed to such employee's injury; and it shall not be a defense:

(1) That the employee either expressly or impliedly assumed the risk of the hazard complained of.

(2) That the injury or death was caused in whole or in part by the want of ordinary or reasonable care of a fellow servant.

The foregoing section abolishes the common-law doctrine of assumption of risk and the fellow-servant rule, and modifies the defense of contributory negligence, thereby increasing the liability of the employer in excess of 300 per cent. The constitutionality of such legislation is clearly shown by the following quotations from a recent opinion of the justices of the Supreme Court of Massachusetts (July 24, 1911):

*"The rules of law relating to contributory negligence and assumption of the risk and the effect of negligence by a fellow-servant were established by the courts, not by the constitution, and the legislature may change them or do away with them altogether as defenses (as it has to some extent in the employers' act) as in its wisdom, in the exercise of powers intrusted to it by the constitution, it deems will be best for the good and welfare of this commonwealth."*

This portion of the act is not elective and applies to every employer. In an action at law, there is no limit placed upon the amount of damages that may be recovered for personal injuries sustained. If, however, an employer elects the compensation schedule fixed by the succeeding sections of the act, the amount that

may be recovered by an injured employee is limited to the scale of compensation specified in section 8 of the act. In determining whether or not he will elect compensation, a prudent employer will take into consideration his increased liability, the present tendency of the courts and juries to allow heavy damages for personal injuries, and the fact that the ordinary indemnity insurance is limited to \$5,000 for a single injury and to \$10,000 where more than one person is hurt through a single accident. The New York Commission investigated two hundred and thirty-four fatal cases, and found that 2.1 per cent of the recoveries allowed were in excess of \$5,000. Statistics show that when an accident causes permanent disability, a larger sum is awarded the injured than is paid where the accident results in death. This is exemplified by the recent decision of the Supreme Court of the State of California, affirming a judgment for \$70,000, which, together with accrued interest and costs, amounted to \$92,000. These instances plainly show that insurance under the old system of employers' liability is wholly inadequate, and that only through compensation, with its limited risks, can the employer be fully protected.

## **EMPLOYER CAN NOT AVOID LIABILITY BY CONTRACT.**

**Sec. 2.** No contract, rule or regulation, shall exempt the employer from any of the provisions of the preceding section of this act.

This section makes it impossible for an employer to avoid liability for damages by obtaining from his employee, as a condition precedent to employment, a waiver of liability which would impair the employee's rights under this act.

## ELECTIVE COMPENSATION PROVISIONS.

### Liability for Compensation.

Sec. 3. Liability for the compensation hereinafter provided for, in lieu of any other liability whatsoever, shall, without regard to negligence, exist against an employer for any personal injury accidentally sustained by his employees, and for his death if the injury shall approximately cause death, in those cases where the following conditions of compensation concur:

(1) Where, at the time of the accident, both the employer and employee are subject to the provisions of this act according to the succeeding sections hereof.

(2) Where, at the time of the accident, the employee is performing service growing out of and incidental to his employment and is acting within the line of his duty or course of his employment as such.

(3) Where the injury is approximately caused by accident, either with or without negligence, and is not so caused by the wilful misconduct of the employee.

### WHERE OPTION MAY BE EXERCISED.

And where such conditions of compensation exist for any personal injury or death, the right to the recovery of such compensation pursuant to the provisions of this act, and acts amendatory thereof, shall be the exclusive remedy against the employer for such injury or death, except that when the injury was caused by the personal gross negligence or wilful personal misconduct of the employer, or by reason of his violation of any statute designed for the protection of employees from bodily injury, the employee may, at his option, either claim compensation under this act, or maintain an action for damages therefor; in all

other cases the liability of the employer shall be the same as if this and the succeeding sections of this act had not been passed, but shall be subject to the provisions of the preceding sections of this act.

Compensation must be paid for any personal injury accidentally sustained by an employee, whenever these facts appear:

(1) Both employer and employee are subject to the compensation provisions of the act.

(2) Injury approximately caused by accident.

(3) Employee at the time of the accident was performing service, within scope of employment and growing out of and incidental to his employment.

(4) Such injury was not caused by wilful misconduct of injured employee.

An accident has been defined as "a bodily injury arising out of the sudden action of a violent, fortuitous and external cause."

It makes no difference who is to blame for the accidental injury; it is sufficient that the injury was received while the employee was performing the proper services of his employment. Only wilful misconduct, that is to say "intentional" misconduct, on the part of the injured employee can relieve the employer from liability for compensation.

## **COMPENSATION EXCLUSIVE REMEDY.**

When the conditions of compensation exist, the right to compensation becomes the exclusive remedy of the injured employee, unless

(1) The injury was caused by the "personal gross negligence" or "wilful personal misconduct" of employer; or,

(2) By reason of his violation of any statute designed for the protection of his employees from bodily injury.

In either of such cases the employee may

elect compensation or proceed at law for damages.

Objection has been made to the foregoing exceptions upon the ground that it gives the employee an undue advantage in permitting choice between action at law and compensation according to schedule. Such criticism is made perhaps without a clear understanding of the reasons for the option or the limitations placed upon its exercise.

The section is punitive and, where such conditions prevail, a distinction is recognized under the common law, and exemplary or punitive damages allowed when a person by his conduct shows a wilful disregard for the life or limb of another, whether that other be a stranger or an employee.

The workman is denied the right to compensation where the accident results from his wilful misconduct, and likewise the employer is denied the benefit of compensation (at the option of the workman) if the accident results from the gross "personal" fault or misconduct of the employer. The additional burden imposed upon the employer is very slight, and the option will be but seldom taken advantage of by the employee.

In England, the workman is given the option in every case, after the happening of the injury, to determine as to whether he will elect to accept compensation or sue at law, and "while the right to sue is retained, it is of small practical importance, the great majority of injured cases being taken up under the compensation law." (Bulletin of the Federal Bureau of Labor, No. 92, Jan. 1911, page 108.)

The United States Steel Corporation, which employs over 100,000 men, a few years ago voluntarily adopted a compensation schedule, under which they pay materially less than is allowed by our act. Their statistics show that

only one person out of every 200 injured refuses compensation and resorts to law.

In our act, the option is given to the employee only when the accident is caused by the "gross personal" fault of the employer. The negligence or misconduct of another can not be imputed to the employer, and since the option is so limited, in view of the statistics above referred to, it seems safe to say that the additional right given to the employee will not keep any fair-minded employer from accepting the compensation scheduled.

## EMPLOYERS WITHIN THE MEANING OF THE ACT.

Sec. 4. The following shall constitute employers subject to the provisions of this act within the meaning of the preceding section:

(1) The state, and each county, city and county, city, town, village and school districts and all public corporations, every person, firm, and private corporation, (including any public service corporation) who has any person in service under any contract of hire, express or implied, oral or written, and who, at or prior to the time of the accident to the employee for which compensation under this act may be claimed, shall, in the manner provided in the next section, have elected to become subject to the provisions of this act, and who shall not, at the time of such accident, have withdrawn such election, in the manner provided in the next section.

This section, when read in connection with sections 6 and 7, defines the two classes of employers to which the compensation schedule applies.

(1) The state, and each county, city and county, city, town, village and school district and all public corporations.

(2) All private employers who shall have

elected to come within the compensation provisions of the act.

Except in so far as it may conflict with the constitutional provisions relative to charter cities, there can be little doubt as to the right of the legislature to provide for the compensation of those in the public service. Since compensation to injured workmen is based upon broad considerations of public welfare, as well as the resultant benefit to the individual, the state and its subdivisions should be the first to extend to employees the compensation which the state recommends to private employers.

Officials of the public bodies named should make proper provisions for the compensation fixed.

## **MANNER OF ELECTION TO COME UNDER COMPENSATION.**

**Sec. 5.** Such election on the part of the employer shall be made by filing with the industrial accident board, hereinafter provided for a written statement to the effect that he accepts the provisions of this act, the filing of which statement shall operate, within the meaning of section three of this act, to subject such employer to the provisions of this act and all acts amendatory thereof for the term of one year from the date of the filing of such statement, and thereafter, without further act on his part, for successive terms of one year each, unless such employer shall, at least sixty days prior to the expiration of such first or any succeeding year, file in the office of said board a notice in writing to the effect that he withdraws his election to be subject to the provisions of the act.

By filing the statement with the Industrial Accident Board, the employer voluntarily accepts the compensation schedule of the act for the term of one year. Since compensation

legislation is in a sense experimental in California, and its ultimate success dependent upon the co-operation of the employer, it was thought best to allow an employer to elect the compensation for a limited term, with the right to withdraw his election at the expiration of the term in the event he found compensation unsatisfactory.

There is not an instance on record where compensation legislation, once adopted, has subsequently been repealed, and those interested in such legislation believe that every fair-minded employer who may accept this compensation schedule will be content to remain under it. The principle involved in compensation legislation seems to have met with the approval of the people of this state. Some objections have been made to certain portions of the act, and if it be found that the act is in any respect unfair to the employer or the employee, those interested in its ultimate success will be among the first to admit the criticism and to urge a remedy.

Since this act was passed, a constitutional amendment designed to meet any constitutional objections has been adopted by the people of this state, and it is probable that at some future time a compulsory act will be adopted.

## EMPLOYEES WITHIN THE MEANING OF THE ACT.

Sec. 6. The term "employee" as used in section three of this act shall be construed to mean:

- (1) Every person in the service of the state, or any county, city and county, city, town, village or school district therein, and all public corporations, under any appointment or contract of hire, express or implied, oral or written, except any official of the state, or of any county, city and county, city, town, village or

school district therein or any public corporation, who shall have been elected or appointed for a regular term of one or more years, or to complete the unexpired portion of any such regular term.

(2) Every person in the service of another under any contract of hire, express or implied, oral or written, including aliens, and also including minors who are legally permitted to work under the laws of the state, (who, for the purposes of the next section of this act, shall be considered the same and shall have the same power of contracting as adult employees), but not including any person whose employment is but casual and not in the usual course of the trade, business, profession or occupation of his employer.

This section defines the two classes of employees:

(1) Public employees.

(2) Private employees.

In the first class a distinction is made between an "employee" and an "official." Public officials are not included in the compensation benefits.

In the second class a distinction is made between the ordinary employee and the employee "whose employment is but casual, and not in the usual course of the trade, business, profession or occupation of his employer." Such employees are excluded from the compensation benefits.

## EMPLOYEES SUBJECT TO COMPENSATION PROVISIONS.

Sec. 7. Any employee as defined in subsection (1) of the preceding section shall be subject to the provisions of this act and of any act amendatory thereof. Any employee as defined in subsection (2) of the preceding section shall be deemed to have accepted and shall,

within the meaning of section 3 of this act be subject to the provisions of this act and of any act amendatory thereof, if, at the time of the accident upon which liability is claimed:

(1) The employer charged with such liability is subject to the provisions of this act, whether the employee has actual notice thereof or not; and

(2) At the time of entering into his contract of hire, express or implied, with such employer, such employee shall not have given to his employer notice in writing that he elects not to be subject to the provisions of this act, or, in the event that such contract of hire was made in advance of such employer becoming subject to the provisions of the act, such employee shall, without giving such notice, remain in the service of such employer for thirty days after the employer has filed with said board an election to be subject to the terms of this act.

(1) "Public Employees." As to such persons, the act is compulsory. No recovery can be had against the state by an individual unless given the right by statute. Since the legislature can deprive an injured person of all right against the state to compensation, it can compel such person to accept the compensation it chooses to extend.

(2) "Private Employees." The same reasons which impelled the legislature to make the act optional with employers apply with equal force to employees. After an acceptance has been filed by the employer, the workman may elect whether he desires to accept compensation or retain his common-law right to sue. If the employer has accepted the compensation schedule, then the employee comes under its provisions, unless (1) at the time of entering into the employment, the employee gives the written notice required by this section; or (2), if the contract of hire was made before

the date of the employer's acceptance, the employee gives said notice within thirty days. In either case, the dependents of a deceased workman are bound by his election.

In England and some other jurisdictions, the workman is not compelled to make his election until after the happening of the accident, but our legislature felt that it was unfair to the employer to allow a workman to sue at law in ordinary instances, if he thought he could get more by so doing, and apply for compensation when no legal liability existed. Furthermore, if he could elect after the injury, it would create dissatisfaction and unnecessary economic waste—dissatisfaction in that when two men are similarly injured, one might sue at law and get either \$10,000 or nothing, and the other elect compensation and get \$1,000; waste in that in every instance the employer would have to procure all the evidence and prepare his defenses in anticipation of a suit, not knowing whether or not an action at law would be brought against him.

The objections to the jury system of fixing damages for personal injuries are well stated by the Supreme Court of Washington in its recent opinion (Sept. 27, 1911), sustaining the Compulsory Workman's Compensation Act of that state as follows:

*"No one knows better than judges of courts of nisi prius and of review that the common-law method of making such awards, even in those instances to which it is applicable, proves in practice most unsatisfactory. All judges have been witnesses to extravagant awards made for most trivial injuries, and trivial awards made for injuries ruinous in their nature; and perhaps no verdicts of juries are interfered with so often by the courts as verdicts making awards in such cases. There is no standard of measurement that the court can submit to the jury by which they can determine the amount of the award.*

*"For this unscientific system, it is proposed to substitute a system which will make an award in all cases of injury, regardless of the cause or manner of its infliction; limited in amount, it is true, but commensurate in some degree to the disability suffered."*

## SCALE OF COMPENSATION.

Sec. 8. Where liability for compensation under this act exists the same shall be as provided in the following schedule:

### Medical and Surgical Treatment and Supplies.

(1) Such medical and surgical treatment, medicines, medical and surgical supplies, crutches and apparatus, as may be reasonably required at the time of the injury and thereafter during the disability, but not exceeding ninety days, to cure and relieve from the effects of the injury, the same to be provided by the employer, and in case of his neglect or refusal seasonably to do so, the employer to be liable for the reasonable expense incurred by or on behalf of the employee in providing the same; provided, however, that the total liability under this subdivision shall not exceed the sum of \$100.00.

This provision as to medical treatment is made for three reasons:

(1) As a rule, the employer is perhaps more competent to judge the efficiency of the doctor and to provide proper medical and surgical treatment than the injured man.

(2) It is to the interest of the employer to furnish the very best medical and surgical care to minimize the result of the injury, and to secure an early recovery.

(3) By so doing, he obtains a complete knowledge of the condition of the injured employee.

## Time of Compensation Payments.

(2) If the accident causes disability, an indemnity which shall be payable as wages on the eighth day after the injured employee leaves work as the result of the injury, and weekly thereafter, which weekly indemnity shall be as follows:

### Payment in Total Disability.

(a) If the accident causes total disability, sixty-five per cent of the average weekly earnings during the period of such total disability; provided, that if the disability is such as not only to render the injured employee entirely incapable of work, but also so helpless as to require the assistance of a nurse, the weekly indemnity during the period of such assistance shall be increased to one hundred per cent of the average weekly earnings.

### Payment in Partial Disability.

(b) If the accident causes partial disability, sixty-five per cent of the weekly loss in wages during the period of such partial disability.

(c) If the disability caused by the accident is at times total and at times partial, the weekly indemnity during the periods of each such total or partial disability shall be in accordance with said subsections (a) and (b) respectively.

The object in providing for the payment in weekly installments is to furnish the compensation to the injured person at the same times that the family has been in the habit of receiving support and to insure the payment as needed. A deviation in this rule can be made in the case of death benefits, when the Industrial Accident Board is convinced that it is to the best interests of the parties to order that the amount be paid in a lump sum or otherwise.

The scale of compensation as here established divides the burden between the employer and the employee upon a basis of 65 and 35 per

cent of the loss accruing from the injury. Except that where disability is total and the injured employee is so helpless as to require the service of a nurse, it is increased during such period to 100 per cent.

### **Why Full Wages Are Not Allowed.**

It is urged that a compensation scheme should shift the entire burden upon the industry. This, however, is open to the following objections:

(1) To shift this entire burden to the employer before he has the opportunity to provide for it in the cost of production would not be fair to him;

(2) When the employee must bear a part of the burden there will not be a tendency to malingering.

One of the chief aims of compensation legislation is to provide something for every injury of more than a temporary character without unnecessarily burdening the industry. The maximum may seem insufficient in case of total disability or death, but, as to the employees as a whole, this is more than balanced by the certainty of some compensation for every serious injury.

### **LIMITATIONS UPON RIGHT TO COMPENSATION.**

(d) Said subsections (a), (b) and (c) shall be subject to the following limitations:

Aggregate disability indemnity for a single injury shall not exceed three times the average annual earnings of the employee.

If the period of disability does not last more than one week from the day the employee leaves work as the result of the accident no indemnity whatever shall be recoverable.

If the period of disability lasts more than one week from the day the employee leaves work as the result of the accident, no indemnity shall

be recoverable for the first week of the period of such disability.

The aggregate disability period shall not, in any event extend beyond fifteen years from the date of the accident.

(1) Aggregate liability for a single injury is limited to three times the average annual wage earning. At law the recovery is unlimited, so that only by electing compensation can an employer know the maximum amount that he will be called upon to pay to compensate his employees for injuries sustained.

(2) No indemnity is allowed for the first week's disability. As medical and surgical treatment are furnished in all cases, it seems fair that in minor accidents not causing disability for more than a week and not inflicting serious hardship, no compensation should be allowed.

(3) The aggregate disability period is limited to fifteen years, even though the total amount paid during that time may not equal three times the annual wage earning.

## **EFFECT OF DEATH UPON LIABILITY OF EMPLOYER FOR COMPEN- SATION.**

(3) The death of the injured employee shall not affect the obligation of the employer under subsections (1) and (2) of this section, so far as his liability shall have accrued and become payable at the time of the death, but the death shall be deemed the termination of disability, and the employer shall thereupon be liable for the following death benefits in lieu of any further disability benefits, provided that such death was approximately caused by the accident causing such disability:

The purpose of compensation legislation is to provide compensation for the injured employee and for his dependents when his death

results from accident. The theory being that if death results from any other cause, the industry is under no obligation to care for his dependents. The fact that the employee was receiving compensation at the time of his death does not give his dependents any additional right.

Where the accident does not cause immediate death, but is the proximate cause thereof within a period of fifteen years thereafter, the death benefits provided in this section are to be paid in lieu of all other liabilities. The liability of the employer can not, in any event, be greater than three times the annual wage earnings, and in case of death from this amount is to be deducted any payment previously made to the injured person as compensation.

## **AMOUNT OF DEATH BENEFITS.**

### **Persons Wholly Dependent.**

(a) In case the deceased employee leaves a person or persons wholly dependent upon him for support, the death benefit shall be a sum sufficient when added to the benefits which shall, at the time of death, have accrued and become payable under the provisions of subsection (2) of this section to make the total compensation for the injury and death, (exclusive of the benefit provided for in subsection (1), equal to three times his annual average earnings, not less than \$1,000 nor more than \$5,000, the same to be payable, unless and until the industrial accident board shall otherwise direct, in weekly installments corresponding in amount to the weekly earnings of the employee.

The maximum limit is the same as for compensation. Where the accident does not immediately result in death, but was the proximate cause of death, the limit is the same; that is, the total amount paid as weekly indemnity and the death benefit together shall not exceed

three times the annual earnings. Death benefits may be ordered paid in weekly installments, such as the dependents were accustomed to receive or in such other manner as may, in the discretion of the board, seem most beneficial to the dependents.

### **Persons Partially Dependent.**

(b) In case the deceased employee leaves no one wholly dependent on him for support, but one or more persons partially dependent therefor, the death benefit shall be such percentage of three times such average annual earnings of the employee as the annual amount devoted by the deceased to the support of the person or persons so partially dependent upon him for support bears to such average earnings, the same to be payable, unless and until the industrial accident board shall otherwise direct, in weekly installments corresponding to the weekly earnings of the employee; provided, that the total compensation for the injury and death, (exclusive of the benefit provided for in said subsection (1) shall not exceed three times such average annual earnings.

When the deceased leaves no person wholly dependent, the death benefit is to be apportioned among those partially dependent in proportion to the aid or contribution made by the deceased to their support. In an action at law, the heirs would be entitled to full damages.

## **LIMITATIONS UPON DEATH BENEFITS.**

### **(1) Limitation in Time.**

(c) In the event that the accident shall have approximately caused permanent disability, either total or partial, and the employee shall die within fifteen years after the date of the accident, liability for the death benefits provided for in said subsections (a) and (b) re-

spectively shall exist only where the accident was the approximate cause of death within said period of fifteen years.

## (2) Limitation as to Beneficiaries.

(d) If the deceased employee leaves no person dependent upon him for support, and the accident approximately causes death, the death benefit shall consist of the reasonable expenses of his burial not exceeding \$100.

If death does not result within fifteen years the employer is not liable for any death benefit.

## AVERAGE ANNUAL EARNINGS.

### Method of Computation.

Sec. 9. (1) The weekly earning referred to in section (8) shall be one fifty-second of the average annual earnings of the employee; average annual earnings shall not be taken at less than \$333.33, nor more than \$1,666.66, and between said limits shall be arrived at as follows:

(a) If the injured employee has worked in such employment, whether for the same employer or not, during substantially the whole of the year immediately preceding his injury, his average annual earnings shall consist of three hundred times the average daily wage or salary which he has earned as such employee during the days when so employed.

(b) If the injured employee has not so worked in such employment during substantially the whole of such immediately preceding year, his average annual earnings shall consist of three hundred times the average daily wage or salary which an employee of the same class working substantially the whole of such immediately preceding year in the same or a similar employment in the same or a neighboring place shall have earned during the days when so employed.

(c) In cases where the foregoing methods of arriving at the average annual earnings of the injured employee can not reasonably and fairly be applied, such annual earnings shall be taken at such sum as having regard to the previous earnings of the injured employee, and of other employees of the same or most similar class, working in the same or most similar employment in the same or neighboring locality, shall reasonably represent the average earning capacity of the injured employee at the time of the injury in the employment in which he was working at such time.

### PREVIOUS DISABILITY NOT A BAR TO RECOVERY.

(d) The fact that an employee has suffered a previous disability, or received compensation therefor, shall not preclude him from compensation for a later injury, or for death resulting therefrom, but in determining compensation for the later injury, or death resulting therefrom, his average annual earnings shall be such sum as will reasonably represent his annual earning capacity at the time of the later injury, and shall be arrived at according to the previous provisions of this section.

### COMPUTATION OF WEEKLY LOSS IN WAGES.

(2) The weekly loss in wages referred to in section 8, shall consist of the difference between the average weekly earnings of the injured employee, computed according to the provisions of this section, and the weekly amount which the injured employee, in the exercise of reasonable diligence, will probably be able to earn, the same to be fixed as of the time of the accident, but to be determined in view of the nature and extent of the injury.

The foregoing sections provide the manner

in which the wage earning shall be ascertained and compensation computed. Under ordinary circumstances there will be no dispute as to the wage paid. The compensation is to be computed with regard to the employee's earning power at the time of the accident.

### DEPENDENTS DEFINED.

(3) The following shall be conclusively presumed to be solely and wholly dependent for support upon a deceased employee:

(a) A wife upon a husband.

(b) A husband upon a wife upon whose earnings he is partially or wholly dependent at the time of her death.

(c) A child or children under the age of eighteen years (or over said age, but physically or mentally incapacitated from earning), upon the parent with whom he or they are living at the time of the death of such parent, there being no surviving dependent parent. In case there is more than one child thus dependent, the death benefit shall be divided equally among them. In all other cases questions of entire or partial dependency shall be determined in accordance with the fact, as the fact may be at the time of the death of the employee, and in such other cases if there is more than one person wholly dependent, the death benefit shall be divided equally among them and persons partially dependent, if any, shall receive no part thereof, and if there is more than one person partially dependent, the death benefit shall be divided among them according to the relative extent of their dependency.

### TIME WHEN STATE OF DEPENDENCY IS FIXED.

(4) Questions as to who constitute dependents and the extent of their dependency shall

be determined as of the date of the death of the employee, and their right to any death benefit shall become fixed as of such time, irrespective of any subsequent change in conditions, and the death benefit shall be directly recoverable by and payable to the dependent or dependents entitled thereto or their legal guardians or trustees.

Certain persons above mentioned are conclusively presumed to be dependents. All other questions of dependency are to be determined as other questions of fact. In determining the question of dependency, the status is fixed as of the date of the death, not as of the date of the accident.

## WHEN AND HOW NOTICE OF INJURY MUST BE GIVEN.

Sec. 10. No claim to recover compensation under this act shall be maintained unless within thirty days after the occurrence of the accident which is claimed to have caused the injury or death, notice in writing, stating the name and the address of the person injured, the time and the place where the accident occurred, and the nature of the injury, and signed by the person injured or someone in his behalf, or in case of his death, by a dependent or someone in his behalf, shall be served upon the employer by delivering to and leaving with him a copy of such notice or by mailing to him by registered mail a copy thereof in a sealed and posted envelope addressed to him at his last known place of business or residence. Such mailing shall constitute complete service. Provided, however, that any payment of compensation under this act, in whole or in part, made by the employer before the expiration of said thirty days shall be equivalent to the notice herein required, and provided further, that the failure to give any such notice, or any defect or inaccu-

racy therein, shall not be a bar to recovery under this act if it is found as a fact in the proceedings for collections of the claim that there was no intention to mislead the employer, and that he was not in fact misled thereby, and provided further that if no such notice is given and no payment of compensation made, within one year from the date of the accident, the right to compensation therefor shall be wholly barred.

Notice of the injury must be in writing, and it must contain name and address of the person injured, time and place of the accident, and nature of the injury. It must be signed by the injured person, a dependent or some one in his behalf, and must be served "personally" upon the employer or sent to his last known address by registered mail, WITHIN THIRTY DAYS AFTER THE ACCIDENT.

#### Examination by Physicians.

Sec. 11. Wherever in case of injury the right to compensation under this act would exist in favor of any employee, he shall, upon the written request of his employer, submit from time to time to examination by a regular practicing physician, who shall be provided and paid for by the employer, and shall likewise submit to examination from time to time by any regular physician selected by said industrial accident board, or any member or examiner thereof. The employee shall be entitled to have a physician provided and paid for by himself present at any such examination. So long as the employee, after such written request of the employer, shall refuse to submit to such examination, or shall in any way obstruct the same, his right to begin or maintain any proceeding for the collection of compensation shall be suspended, and if he shall refuse to submit to such examination after direction by

the board, or any member or examiner thereof, or shall in any way obstruct the same, his right to the weekly indemnity which shall accrue and become payable during the period of such refusal or obstruction, shall be barred. Any physician who shall make or be present at any such examination may be required to testify as to the results thereof.

The employee must permit physicians sent by the employer or by the Industrial Accident Board to examine him at any time after the accident. He may have his own physician there also, if he wishes. If he refuses to submit to such examination, his right to compensation shall be suspended or barred. The physician of the employer and of the employee may be required to testify as to the result of such examination.

### Industrial Accident Board.

Sec. 12. Any dispute or controversy concerning compensation under this act, including any in which the state may be a party, shall be submitted to a board consisting of three members, which shall be known as the industrial accident board. Within thirty days before this act shall take effect, the governor, by and with the advice and consent of the senate, shall appoint a member who shall serve two years, and another who shall serve three years, and another who shall serve four years. Thereafter such three members shall be appointed and confirmed for terms of four years each. Vacancies shall be filled in the same manner for the unexpired term. Each member of the board, before entering upon the duties of his office, shall take the oath prescribed by the constitution. A majority of the board shall constitute a quorum for the exercise of any of the powers or authority conferred by this act, and an award by a majority shall be valid. In

case of a vacancy, the remaining two members of the board shall exercise all the powers and authority of the board until such vacancy is filled. Each member of the board shall receive an annual salary of three thousand six hundred dollars.

The members of the Industrial Accident Board, appointed at the time the law went into effect, September 1, 1911, and their respective terms of office are:

A. J. Pillsbury, Piedmont; term, four years.

Will J. French, San Francisco; term, three years.

Willis I. Morrison, Pasadena; term, two years.

It is expected that the employer and the employee will attempt to settle their differences without recourse to the board, and since the amount of compensation to be paid is fixed by the act, that in a large majority of cases such settlements will be effected.

If this fails, then the board will hold a hearing, and from the evidence produced relative to the facts connected with the accident, injury or wages, determine upon such award as seems just. It is the purpose of the board to afford quick relief at a minimum of expense to the litigants, and, therefore, the hearing will be had at the place of the accident or such other place as may be convenient for the parties.

One of the chief advantages in creating the board to administer the act is that by so doing uniformity of ruling is assured, which would not be the case were the act administered by individuals in various localities.

## ORGANIZATION OF THE BOARD.

Sec. 13. The board shall organize by choosing one of its members as chairman. Subject

to the provisions of this act, it may adopt its own rules of procedure and may change the same from time to time in its discretion. The board, when it shall deem it necessary to expedite its business, may from time to time employ one or more expert examiners for such length of time as may be required. It may also appoint a secretary and such clerical help as it may deem necessary. It shall fix the compensation of all assistants so appointed.

The Industrial Accident Board organized by electing A. J. Pillsbury chairman, and appointing Aaron L. Sapiro, of San Francisco, secretary.

Whenever required to expedite matters, the board will appoint an examiner, with power to make a preliminary investigation, and to take such testimony as may be obtained. The rules adopted by the board immediately follow the annotations to the act.

#### Office of the Board and Traveling Expenses.

Sec. 14. The board shall keep its office at the city of San Francisco, and shall be provided by the secretary of state with a suitable room or rooms, necessary office furniture, stationery, and other supplies. The members of the board and its assistants, shall be entitled to receive from the state their actual and necessary expenses while traveling on the business of the board, but such expenses shall be sworn to by the person who incurred the same, and be approved by the chairman of the board, before payment is made. All salaries and expenses authorized by this act shall be audited and paid out of the general funds of the state the same as other general state expenses are audited and paid.

The office of the board is located in Room 907, Royal Insurance Building, 201 Sansome street, San Francisco.

## POWERS AND DUTIES OF THE BOARD IN HEARINGS.

### Notice of Hearing.

Sec. 15. Upon the filing with the board by any party in interest of an application in writing stating the general nature of any dispute or controversy concerning compensation under this act, it shall fix a time for the hearing thereof, which shall not be more than forty days after the filing of such application. The board shall cause notice of such hearing to be given to each party interested by service of such notice on him personally or by mailing a copy thereof to him at his last known post office address at least ten days before such hearing. Such hearing may be adjourned from time to time in the discretion of the board, and hearings shall be held at such places as the board shall designate. Either party shall have the right to be present at any hearing, in person or by attorney or any other agent, and to present such testimony as shall be pertinent to the controversy before the board, but the board may, with or without notice to either party, cause testimony to be taken, or inspection of the premises where the injury occurred to be had, or the time books and pay roll of the employer to be examined by any member of the board or any examiner appointed by it, and may from time to time, direct any employee claiming compensation to be examined by a regular physician; the testimony so taken and the results of any such inspection or examination, to be reported to the board for its consideration upon final hearing. The board, or any member thereof, or any examiner appointed thereby shall have power and authority to issue subpoenas to compel the attendance of witnesses or parties, and the production of books, papers, or records, and to administer oaths. Obedience to such subpoenas shall be

enforced by the superior court of any county, or city and county.

This section relates to the procedure to be followed by the Industrial Accident Board, in determining controversies submitted to it.

The pleadings required will be simple, and only for the purpose of enabling each party and the board to understand the exact nature of the dispute in controversy.

## FINDINGS AND AWARDS.

Sec. 16. After final hearing by said board, it shall make and file (1) its findings upon all facts involved in the controversy, and (2) its award, which shall state its determination as to the rights of the party.

## JUDGMENT UPON AWARDS.

Sec. 17. Either party may present a certified copy of the award to the superior court for any county or city and county, whereupon said court shall, without notice, render a judgment in accordance therewith, which judgment, until and unless set aside as hereinafter provided, shall have the same effect as though duly rendered in an action duly tried and determined by said court, and shall, with the like effect, be entered and docketed.

## REVIEW OF AWARDS.

Sec. 18. The findings of fact made by the board acting within its powers, shall, in the absence of fraud, be conclusive, and the award, whether judgment has been rendered thereon or not, shall be subject to review only in the manner and upon the grounds following: within thirty days from the date of the award, any party aggrieved thereby may file with the board an application in writing for a review of such award, stating generally the grounds upon

which such review is sought; within thirty days thereafter the board shall cause all documents and papers on file in the matter, and a transcript of all testimony which may have been taken therein, to be transmitted with their findings and award to the clerk of the superior court of that county or city and county wherein the accident occurred; such application for a review may thereupon be brought on for hearing before said court upon such record by either party on ten days' notice to the other, subject, however, to the provisions of law for a change of the place of trial or the calling of another judge. Upon such hearing the court may confirm or set aside such award, and any judgment which may theretofore have been rendered thereon, but the same shall be set aside only upon the following grounds:

(1) That the board acted without or in excess of its powers.

(2) That the award was procured by fraud.

(3) That the findings of fact by the board do not support the award.

When an appeal is desired, it must be taken within thirty days from the date of the award. The review does not allow a trial by the Superior Court of the case presented to the Industrial Accident Board. The facts found by the board are conclusive, and the court in its review can only apply the law to the facts as found by the board, and can not set aside the award except upon the grounds stated in this section. The board will defend its findings and awards upon such review.

## REMANDING OF RECORD.

Sec. 19. Upon the setting aside of any award the court may recommit the controversy and remand the record in the case to the board, for further hearing or proceedings, or it may

enter the proper judgment upon the findings, as the nature of the case shall demand. An abstract of the judgment entered by the trial court upon the review of any award shall be made by the clerk thereof upon the docket entry of any judgment which may theretofore have been rendered upon such award, and transcripts of such abstract may thereupon be obtained for like entry upon the dockets of the courts of other counties, or city and county.

## APPEAL TO THE SUPREME COURT.

Sec. 20. Any party aggrieved by a judgment entered upon the review of any award, may appeal therefrom within the time and in the manner provided for an appeal from the orders of the superior court; but all such appeals shall be placed on the calendar of the supreme court and brought to a hearing in the same manner as criminal causes on such calendar.

Any party may appeal from the judgment of the superior court sustaining or modifying the award, and such appeal goes directly to the Supreme Court of the state and is placed at the head of the calendar. This preference saves many months of delay and insures a speedy settlement of the controversy.

## FEES AND COSTS ON REVIEW.

Sec. 21. No fees shall be charged by the clerk of any court for the performance of any official service required by this act, except for the docketing of judgments and for certified copies of transcripts thereof. In proceedings to review an award, costs as between the parties shall be allowed or not in the discretion of the court.

It is expected that the compensation provisions of the act will be administered practically without cost to the litigants.

## **CLAIMS FOR COMPENSATION NON-ASSIGNABLE.**

**Sec. 22.** No claim for compensation under this act shall be assignable before payment, but this provision shall not affect the survival thereof; nor shall any claim for compensation, or compensation awarded, adjudged or paid, be subject to be taken for the debts of the party entitled thereto.

If the claim were assignable, the employee might be tempted to sell it for an inadequate sum of ready cash, thus defeating one of the purposes of compensation legislation.

The claim for the compensation that has accrued at the time of the death of the injured employee survives, and his estate may collect this amount just as it may collect other debts due at the time of his death. This right of survival is in addition to the death benefits allowed the dependents.

## **CLAIMS FOR COMPENSATION A PREFERRED CLAIM.**

**Sec. 23.** A claim for compensation for the injury or death of any employee, or any award or judgment entered thereon, shall be entitled to a preference over the other debts of the employer if and to the same extent as the wages of such employee shall be so preferred; but this section shall not impair the lien of any judgment entered upon any award.

Claims to, or awards for, compensation have a preference over other debts of an employer to the same extent that claims for wages have, but this preference can not impair the lien of any judgment entered upon a previous award of compensation for injury.

## INSURANCE PROVISIONS.

Sec. 24. Nothing in this act shall affect the organization of any mutual or other insurance company, or any existing contract for insurance or employers' liability, nor the right of the employer to insure in mutual or other companies, in whole or in part, against such liability, or against the liability for the compensation provided for by this act, or to provide by mutual or other insurance, or by arrangement with his employees, or otherwise, for the payment to such employees, their families, dependents, or representatives, of sick, accident or death benefits, in addition to the compensation provided for by this act. But liability for compensation under this act shall not be reduced or affected by any insurance, contributions, or other benefit whatsoever due to or received by the person entitled to such compensation, and the person so entitled shall, irrespective of any insurance or other contract, have the right to recover the same directly from the employer, and in addition thereto, the right to enforce in his own name, in the manner provided in this act, the liability of any insurance company, which may, in whole or in part have insured the liability for such compensation; provided, however, that payment in whole or in part of such compensation by either the employer or the insurance company, shall, to the extent thereof, be a bar to recovery against the other of the amount so paid, and provided further, that as between the employer and the insurance company, payment by either directly to the employee, or to the person entitled to compensation, shall be subject to the conditions of the insurance contract between them.

The employer is primarily liable to the injured employee for the compensation provided by this act, regardless of any arrangement that

the employer may make with a third person to carry this risk. The legislature, recognizing the necessity for an individual to guard against this risk, does not take away any right that he heretofore had to insure against this risk in mutual or other companies.

This section does not, however, authorize the formation of any insurance companies not already authorized by law.

Under this section, the employee is, in effect, made a party to the contract of insurance, and may enforce, in his own name, the liability of any insurance company which has insured against the compensation risk. Under the rules of the Industrial Accident Board, the employee may join the employer and insurance company in his application for relief.

The law recognizes the great benefits to employees of sick, accident, and death benefit societies, voluntarily put into operation by many large employers, and does not attempt to interfere with them.

The employee may, if he so desires, take out insurance at his own expense in his own name, and, in any such event, the benefit paid does not affect the right to compensation or diminish the amount thereof. To diminish the compensation in such instances would be just as unfair as it would be to increase the compensation when the employer is insured.

## **INSURANCE CONTRACT SUBJECT TO COMPENSATION PROVISIONS.**

**Sec. 25.** Every contract for the insurance of the compensation herein provided for, or against liability therefor, shall be deemed to be made subject to the provisions of this act, and provisions thereof inconsistent with this act shall be void. No company shall enter into any such contract of insurance unless such

company shall have been approved by the commissioner of insurance, as provided by law.

Under this section any contract of insurance against compensation is made subject to all the provisions of this act, including the rights and liabilities of the insurance company created under the preceding section.

Before any company can enter into a contract of insurance against the compensation risk, it must first be approved by the Insurance Commissioner, as provided by law. The purpose of this provision is to guard against the formation of companies not strong enough financially to carry the risk.

## LIABILITY OF THIRD PARTIES.

Sec. 26. The making of a lawful claim against an employer for compensation under this act for the injury or death of his employee shall operate as an assignment of any assignable cause of action in tort which the employee or his personal representative may have against any other party for such injury or death, and such employer may enforce in his own name the liability of such other party.

Where the injury is caused by the negligence or wrongdoing of a third person, the injured workman has his choice of one of two remedies.

(1) He may proceed at law and maintain an action in tort to recover damages from the person whose fault is responsible for the accident, or

(2) He may elect the compensation provided by this act. In the event the injured employee elects compensation, the employer, who must pay the compensation, succeeds to the rights of the injured employee and may maintain an action at law in his own name to recover damages from the person directly responsible for the injury.

## FORMS, NOTICES, AND BOOKS.

### Posting of Notices.

Sec. 27. The board shall cause to be printed and furnished free of charge to any employer or employee such blank forms as it shall deem requisite to facilitate or promote the efficient administration of this act; it shall provide a proper record book in which shall be entered and indexed the name of every employer who shall file a statement of election under this act, and the date of the filing thereof, and a separate book in which shall be entered and indexed the name of every employer who shall file his withdrawal of such election, and the date of the filing thereof; and a book in which shall be recorded all awards made by the board; and such other books or records as it shall deem required by the proper and efficient administration of this act; all such records to be kept in the office of the board. Upon the filing of a statement of election by an employer to become subject to the provisions of this act, the board shall forthwith cause notice of the fact to be given to his employees, by posting and keeping continuously posted in a public and conspicuous place such notice thereof in the office, shop, or place of business of the employer, or by publishing, or in such other manner as the board shall deem most effective, and the board shall cause notice to be given in like manner of the filing of any withdrawal of such election; but notwithstanding the failure to give, or the insufficiency of, any such notice, knowledge of all filed statements of election and withdrawals of election, and of the time of the filing of the same, shall conclusively be imputed to all employees.

The Industrial Accident Board will provide all notices and forms and will furnish any information as to the act upon request. By their rules, appended hereto, the board calls atten-

tion to the formal requirements under the law. In order to facilitate and promote the efficient administration of the act, it is essential that the forms adopted by the board should be used whenever applicable.

Notices must be posted as indicated, but knowledge of withdrawal and election is imputed to employees, even should the notices not be posted and kept posted as directed.

## RIGHT TO COMPROMISE.

Sec. 28. Nothing in this act contained shall be construed as impairing the right of parties interested, after the injury or death of an employee, to compromise and settle upon such terms as they may agree upon, any liability which may be claimed to exist under this act on account of such injury or death, nor as conferring upon the dependents of any injured employee any interest which he may not divert by such settlement or for which he or his estate shall, in the event of such settlement by him, be accountable to such dependents or any of them.

Compromises and settlements between parties in interest, the employer and the injured employee or dependents, are permitted after the injury or death of an employee.

## APPROPRIATION FOR PURPOSES OF ACT.

Sec. 29. The sum of fifty thousand dollars is hereby appropriated out of any moneys in the state treasury, not otherwise appropriated, to be used by the industrial accident board in carrying out the purposes of this act, and the controller is hereby directed to draw his warrant on the general fund from time to time in favor of said industrial accident board for the amounts expended under its direction, and the

treasurer is hereby authorized and directed to pay the same.

Sec. 30. All acts or parts of acts inconsistent with this act are hereby repealed.

Sec. 31. This act shall take effect and be in force on and after the first day of September, A. D. 1911.

# **RULES OF PRACTICE OF THE INDUSTRIAL ACCIDENT BOARD OF CALIFORNIA.**

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The following rules shall go into immediate effect under the provisions of Chapter 399, Laws 1911, and shall govern in any matter or proceeding relating to the administration of said act by the Industrial Accident Board.

## **RULE I.**

### **Preliminary.**

Chapter 399, Laws 1911, may be cited as the "Employers' Liability Act," and these rules as the "Industrial Accident Board Rules." All words and phrases used in these rules shall have the same meaning as is given to the same words and phrases in sections 3 to 31 of the "Employers' Liability Act."

## **RULE II.**

### **Office of Industrial Accident Board.**

The office of the Industrial Accident Board is hereby established at Room 907, Royal Insurance building, 201 Sansome street, San Francisco. Such office shall be open during such hours as are fixed by law for the transaction of public business. The board may from time to time hold public sessions in such other places in the state as convenience may require.

## **RULE III.**

### **Posting of Notices.**

Employers shall immediately post, and keep posted, all notices required to be posted by the

Industrial Accident Board, in conspicuous places in their offices and works where such notices are most likely to be seen and read by their employees.

## **RULE IV.**

### **Reports.**

Employers and physicians attending injured employees shall, within ten days after the happening of an accident causing a loss of industrial time lasting more than one week, make a full report thereof to the Industrial Accident Board. In any case where a compromise of liability for accident is made directly by the employer and employees, a full report of such compromise shall be immediately made by the employer to the Industrial Accident Board.

## **RULE V.**

### **Parties to Proceedings.**

When a controversy arises concerning any matter over which the Industrial Accident Board has jurisdiction, any party to the controversy may apply to the board for relief. The party making such application shall be known as the "applicant." All other persons necessary to enable the board effectively and completely to adjudicate upon and settle all questions involved shall be made parties to the application and shall be known as the "respondents."

An application on behalf of the dependents of a deceased workman for the settlement of a controversy may be made by the legal personal representatives (if any) of the deceased workman on behalf of such dependents or by the dependents themselves. All such dependents shall be joined in the application either as applicants or respondents.

An application for the settlement of a con-

troverſy reſpecting medical attendance or the burial expenſe of a workman who leaves no dependents ſhall be made by the legal representatives (if any) of the deceased workman. If there are no ſuch perſonal representatives, the application may be made by any creditor to whom any ſuch expenſes are due, and all other ſuch creditors known to the applicant muſt be joined as respondents. If the amount awarded is not ſufficient for the payment of ſuch expenſes in full, it ſhall be divided in proportion to the reſpective amounts found to be due.

## **RULE VI.**

### **Joinder of Parties.**

All perſons may be joined as applicants in whom any right to any relief in reſpect of or ariſing out of the ſame tranſaction or ſeries of tranſactions is alleged to exiſt.

All perſons may be joined as respondents againſt whom the right to any relief is alleged to exiſt, whether jointly, ſeverally, or in the alternative, and the board will of its own motion order that any additional party or parties be joined, when it deems their preſence neceſſary.

## **RULE VII.**

### **Pleadings.**

(1) **Application.** The applicant ſhall file a written application for relief with the Industrial Accident Board, containing the names of all parties, a general ſtatement of the claim in controverſy, the facts relating thereto and of the relief ſought to be obtained. The board will thereupon fix a time and place for the hearing thereof, which ſhall not be more than forty (40) days after ſuch filing and will ſerve a copy of ſuch application, together with the notice of hearing, upon each adverſe party. Either party ſhall have the right to be preſent

at any hearing, in person or by attorney or any other agent, and present such testimony as shall be pertinent to the controversy.

(2) **Answer.** When any respondent desires to disclaim any interest in the subject-matter of the claim in controversy, or considers that the application is in any respect inaccurate or incomplete or desires to bring any fact, paper or document to the attention of the board as a defense to the claim or otherwise, he must, within ten days after the service of the application, file with or mail to the board his answer, setting forth the particulars in which the application is inaccurate or incomplete and the facts upon which he intends to rely. A copy thereof must likewise be served upon each party to the proceedings. Any material allegation contained in the application and not controverted in the answer will be deemed to be admitted.

## **RULE VIII.**

### **Service of Pleadings.**

Any pleading or document may be served either by delivering to and leaving with the person to be served, a copy thereof, or by mailing to such person, by United States registered mail a copy thereof in a sealed envelope, with the postage thereon fully prepaid, addressed to such person at his last known place of business or residence.

Where a pleading or document is served by mail, it shall, unless the contrary be proved, be deemed to have been served, at the time when the letter containing the same would have been delivered in the ordinary course of post. Proof of such mailing shall be prima facie proof of service.

## **RULE IX.**

### **Awards.**

An award may be rendered in favor of or against any one or more of the applicants or

respondents, according to their respective rights and liabilities. In every award the compensation to be paid to each person shall be set forth separately.

## **RULE X.**

### **Examiner.**

Whenever convenience may require, the Industrial Accident Board will appoint an examiner, whose duty it shall be to aid the board in making settlements between employers and employees, conduct investigations, take testimony, and to make report of any and all matters relating to the claim in controversy to the board. The board may at any time, and with or without notice to either party, cause testimony to be taken, or any other investigation to be made.

## **RULE XI.**

### **Depositions.**

Depositions may be taken before any notary public or other officer authorized to administer oaths, and, when so taken, used upon any hearing where the convenience of the witnesses requires. Such depositions shall be taken upon notice in the same manner as in courts of record.

## **RULE XII.**

### **Stenographic Reporter.**

Either party may, upon payment of the costs attendant thereon, require that the testimony produced at any hearing be taken down and transcribed by a shorthand reporter.

## **RULE XIII.**

### **Amendments.**

The board, or any member thereof, may at any time, with or without notice, upon good

cause shown, permit any amendment to any pleading or open up any default.

The board may amend or modify or vacate any order or award upon motion of either party or upon its own motion. The moving party shall serve upon all other parties to the proceeding a notice of such motion five days prior to the time when the same is to be heard, unless otherwise ordered by the board or a member thereof.

#### **RULE XIV.**

##### **Extension of Time.**

The board, or any member thereof, may, either with or without notice, grant extensions of time within which to comply with any rule upon good cause shown, and may likewise grant adjournments of hearings.

#### **RULE XV.**

##### **Stipulations.**

Parties to a controversy may stipulate the facts in writing, and the board may thereupon make its order or award based upon such stipulation.

#### **RULE XVI.**

##### **Exceptions.**

At any hearing had before the board, or before any examiner appointed by it, a note shall be made of any question of law raised or exception taken and of the facts in evidence in relation thereto.

#### **RULE XVII.**

##### **Appeals.**

Any party aggrieved may, within thirty (30) days from the date of the award, file with the Industrial Accident Board an application, in writing, for a review of such award, stating

generally the grounds upon which a review is sought, the points upon which he relies, and the facts in evidence relating thereto. A copy of such application shall at the same time be served by the appellant upon all adverse parties. The adverse party or parties may, within ten (10) days thereafter, file with the board an answer to such application for review, stating generally his objections, his points, and the facts in evidence in relation thereto. The board will thereupon prepare and certify a transcript of the testimony taken and transmit the same, together with all documents and papers on file in the matter, to the superior court.

It is hereby ordered that the foregoing rules be, and the same are, adopted as the rules governing the Industrial Accident Board, and for the regulation of practice, and that the same go into effect forthwith.

INDUSTRIAL ACCIDENT BOARD.

A. J. PILLSBURY, *Chairman.*

WILL J. FRENCH.

WILLIS I. MORRISON.

AARON L. SAPIRO, Secretary.

San Francisco, October 25, 1911.



Acceptance blanks will be furnished on application, as well as all the necessary printed matter to comply with the compensation provisions of the Roseberry Employers' Liability Act. Questions will be answered and information cheerfully supplied by the

## **INDUSTRIAL ACCIDENT BOARD**

OF THE

### **STATE OF CALIFORNIA**

ROOM 907 ROYAL INSURANCE BUILDING

201 Sansome Street

SAN FRANCISCO

(Telephones: Sutter 358; C 3589)

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Address of

**WILLIS I. MORRISON:**

1005 Title Insurance Building

**LOS ANGELES, CALIFORNIA**



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